

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.6001 OF 1984

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
  2. To be referred to the reporters or not ?
  3. Whether their lordships wish to see the fair copy of the judgment ?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
  5. Whether it is to be circulated to the Civil Judge?

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P B CHAUHAN

VERSUS

THE GUJARAT ELECTRICITY BOARD

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Appearance:

MR PV HATHI for the Petitioners.

None present for the Respondent.

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Coram: S.K. Keshote,J

Date of decision:9.5.97

C.A.V. JUDGMENT

The petitioners, two in number, Junior Engineers

of the Gujarat Electricity Board, filed this Special Civil Application and challenge has been made to the Resolution, annexure 'E', No.2745 dated 28th November 1980, wherein the experience for promotion from Junior Engineer to Deputy Engineer was fixed at four years for degree holders and twelve years for diploma holders.

2. The petitioners have made a grievance that this change of eligibility made is arbitrary and made a hostile discrimination. Both the petitioners, who are Junior Engineers are diploma holders. The challenge has been made on the ground that weightage of experience was already contemplated while making recruitment as Junior Engineers. A fresh degree holder may be eligible for appointment as Junior Engineer whereas for diploma holder, four years' experience was provided. Both, the degree and diploma holders, Junior Engineers, after having entered in services, were provided equal service benefits in the matter of pay, allowances etc. Both type of Junior Engineers irrespective of qualifications and experience on their appointment, discharged same duties and responsibilities. The Junior Engineers possessing degree and/or diploma are inter transferable and can be entrusted with duty at any station or place. A combined seniority list has been prepared for Junior Engineers irrespective of educational qualifications on the basis of length of service. The change of eligibility for promotion on the basis of experience have no nexus whatsoever with the object to be achieved and as such it is arbitrary.

3. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

4. It is almost a settled principle of law that the employer can change unilaterally, the service conditions of the employees for which, no prior notice or opportunity of hearing is required to be given. It is a prerogative of the employer to lay down service conditions and eligibility for recruitment and promotion to the post in different categories. For promotion from the cadre of Junior Engineers, the respondent-Board has provided a requisite experience to be possessed by the persons to be promoted and this requisite experience vary with reference to the qualifications possessed by persons to be promoted. For Junior Engineers who are diploma holders, requisite experience for promotion to the post of Deputy Engineer has been fixed at 12 years and for Junior Engineers possessing degree the requisite experience for promotion to the above post has been fixed at 4 years. The experience has relation to the

qualification of degree and diploma and I do not find any illegality whatsoever for providing two different periods of experience as the eligibility for promotion for Junior Engineers possessing degree and diploma in engineering. It is true that at the time of initial entry in category of Junior Engineers, a weightage has been given to degree holders as no experience has been provided for their appointment, but on this ground, I fail to see how it can be said to be arbitrary or discriminatory when further eligibility for promotion on the post of Deputy Engineers has been provided of requisite experience with reference to degree and diploma. With reference to the qualifications of degree or diploma, the Board has all the powers to provide requisite experience of different period for further promotions and as such, the Resolution annexure 'E', challenged by the petitioners in this Special Civil Application, in my opinion, is not violative of Articles 14 & 16 of the Constitution of India. So far as the other grievances made by the learned counsel for the petitioners that the experience of Junior Engineers for promotion which is acquired outside the Board service has been counted for other persons while the petitioners services outside the Board is not taken into consideration, and that as the petitioners belong to SC category, they are entitled for preference as per the promotion policy of the Board, is concerned, it is suffice to say that these are matters to be agitated by the petitioners before the Board and in case the petitioners make a representation in this respect, it is expected of the Board to decide the same on merits.

5. The learned counsel for the petitioners fairly conceded that though the Hon'ble Supreme Court has taken a view earlier that different period of experience for eligibility in promotion to the next higher post may not be justified for degree and diploma holders, but the later decision has taken contrary view. In view of this fact, the authorities cited by the learned counsel for the petitioners need not be discussed.

6. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court, stands vacated. No order as to costs.

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